

REC'D TN  
BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

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May 25, 1999

IN RE:

OFFICE OF THE  
EXECUTIVE SECRETARY

PETITION OF AT&T COMMUNICATIONS OF )  
THE SOUTH CENTRAL STATES, INC. FOR THE )  
CONVENING OF A GENERIC CONTESTED CASE ) DOCKET NO. 97-00889  
FOR THE PURPOSE OF ACCESS CHARGE )  
REFORM )

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**ORDER**

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This matter came before the Tennessee Regulatory Authority (the "Authority" or "TRA") during the regularly scheduled Authority Conference held on March 24, 1998, for a decision on four (4) threshold issues.

On February 3, 1998, Director Sara Kyle convened a Pre-Hearing Conference for the purposes of determining the issues to be addressed in this docket and establishing a procedural schedule for the filing of discovery, pre-filed testimony and legal memoranda. As a result of that Pre-Hearing Conference, the parties identified fifteen (15) issues<sup>1</sup> as being relevant to this proceeding, with four (4) issues constituting threshold matters to be decided by the Authority prior to the continuation of this proceeding. The issues raised as threshold matters include the appropriate course for proceeding in this docket and whether certain access charge rate issues raised by the parties should be considered in Docket No. 97-00888, (the "Universal Service Docket").

The four (4) threshold issues from among the list of fifteen are as follows:

Issue No. 2. If access rates are reduced, is it appropriate to do so in this proceeding or during the one time rate rebalancing phase in the

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<sup>1</sup> Exhibit A to the Hearing Officer's Report and Recommendation entered in this matter contains a list of fourteen (14) issues that originated from the parties. The Authority added a fifteenth issue to the list during the Authority Conference held on February 17, 1998.

Universal Service Docket as required by Tenn. Code Ann. § 65-5-207(c)?

Issue No. 12. Does the TRA have the authority to require a company under price regulation to change its access rate structure?

Issue No. 13. Determine the effects that BellSouth's pending access rate reductions mandated by the court settlement with MCI and Sprint will have on any access charge restructuring.

Issue No. 14. Will changes in access reform necessitate changes in state laws or TRA rules? If so, please be specific.

At the Pre-Hearing Conference held on February 3, 1998, the parties agreed to a schedule for the filing of briefs on the threshold issues. Having considered the briefs of the parties and other relevant portions of the record, the Authority makes the following findings and conclusions with respect to the four (4) threshold issues:

Issue No. 2. If access rates are reduced, is it appropriate to do so in this proceeding or during the one time rate rebalancing phase in the Universal Service Docket as required by Tenn. Code Ann. § 65-5-207(c)?

If access rates are reduced, it is appropriate to do so in the one time rate rebalancing phase of the Universal Service Docket (Phase III). Tenn. Code. Ann. § 65-5-207 requires that the Authority consider access charges as part of universal service. Tenn. Code. Ann. § 65-5-207(c)(8)(iii) states that, at a minimum, the Authority must consider intrastate access rates and the appropriateness of such rates as a significant source of universal service support. It does not, however, dictate whether this should be done in developing the universal support mechanism or during rate re-balancing. In Phase II of the Universal Service Docket, the Authority identified the amount of the universal service subsidy, while the purpose of rate rebalancing in Phase III is to identify rate adjustments needed as a result of the support mechanism created in Phases I and II. To facilitate the orderly handling of access charges, the Authority concludes that access charge adjustments should be considered in Phase III of the Universal Service Docket, along with all other potential sources of the universal service subsidy.

Issue No. 12. Does the TRA have the authority to require a company under price regulation to change its access rate structure?

The TRA has the authority to change the access rate structure for price regulated companies, pursuant to Tenn. Code Ann. § 65-5-207(c). Such change in access rate structure will occur during Phase III of the Universal Service Docket. Also, Tenn. Code Ann. § 65-5-208(c) and (d) provide the TRA with the authority to change access rates for price regulated companies.<sup>2</sup> Tenn. Code Ann. § 65-5-208(c) applies to both price regulated and rate of return regulated companies and states that “[t]he authority shall, as appropriate, also adopt other rules or issue orders to prohibit cross-subsidization, preferences to competitive services or affiliated entities, predatory pricing, price squeezing, price discrimination, tying arrangements or other anti-competitive practices.” If the Authority determines that the access charges of an incumbent local exchange carrier violate Tenn. Code Ann. § 65-5-208(c), the Authority may order the necessary rate adjustments.

The parties dispute whether the TRA can order rate adjustments under Tenn. Code Ann. § 65-5-208(c) if such rate adjustments have a negative financial impact on the incumbent local exchange carrier. Tenn. Code Ann. § 65-5-209(b), under the section titled Price Regulation Plan, states:

An incumbent local exchange telephone company shall, upon approval of its application under subsection (c), be empowered to, and shall charge and collect only such rates that are less than or equal to the maximum permitted by this section and subject to the safeguards in Tenn. Code Ann. § 65-5-208(c) and (d) and the non-discriminatory provisions of this title.

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<sup>2</sup> Chairman Greer relied upon Tenn. Code Ann. §§ 65-5-207(c), 65-5-208(c) and 65-5-208(d) in so concluding. Director Kyle noted, “We’re not talking about lowering rates; we’re just talking about changing the rate structure. And I believe that we do have the authority to do that.” Director Malone did not rely upon 65-5-208(d), but did agree that the TRA had the authority to require a company under price cap regulation to change its access rate structure.

No mention is made that adjustments made to the maximum rates pursuant to Tenn. Code Ann. § 65-5-208(c) must be revenue neutral, i.e., not have a financial impact on the incumbent local exchange carrier.

Since the Authority is required to consider access charges as part of the Universal Service Docket, and the resulting Authority decision in Phase III of the Universal Service Docket may resolve some of the outstanding issues presented in this proceeding, the Authority concludes that the Authority's consideration of the access charge reform issues raised in this proceeding should be delayed until after a decision is rendered in Phase III of the Universal Service Docket. If the parties still have unresolved issues after the conclusion of the Universal Service Docket, the Authority can schedule further proceedings, as necessary, to identify and address such issues.

Issue No. 13. Determine the effects that BellSouth's pending access rate reductions mandated by the court settlement with MCI and Sprint will have on any access charge restructuring.

The parties have presented no evidence to suggest that BellSouth's pending access rate reductions mandated by the court settlement with MCI and Sprint will affect access charge restructuring. Thus, the Authority concludes that the court settlement and the restructuring of access charges should be treated as mutually exclusive events.

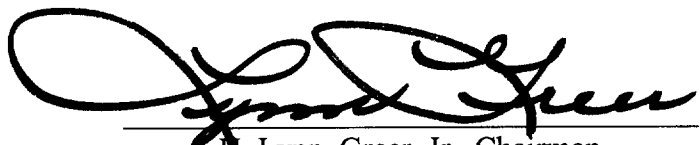
Issue No. 14. Will changes in access reform necessitate changes in either state laws or TRA rules? If so, please be specific.

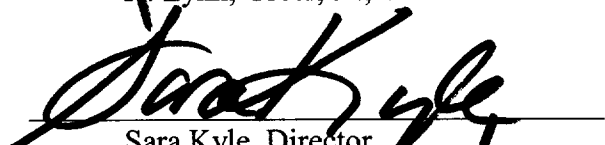
The Authority finds that changes in Tennessee laws or TRA rules are not necessary in order to proceed with this access charge reform proceeding.

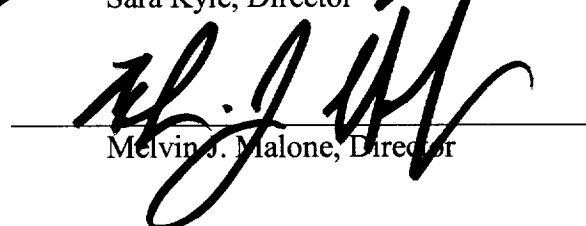
**IT IS THEREFORE ORDERED THAT:**

1. This proceeding shall be conducted in accordance with the foregoing findings and conclusions as to the four (4) threshold issues. The reduction of access rates, if such occurs, will take place in the one time rate rebalancing phase of Docket No. 97-00888 (Universal Service Phase III).

2. Any Party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.

  
H. Lynn, Greer, Jr., Chairman

  
Sara Kyle, Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary